IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10485 of 1999
AND
SPECIAL CIVIL APPLICATION No. 378 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES :: 3 to 5 NO

GUJARAST STATE ROAD TRANSPORT CORPORATION

Versus

K G LABANA

Appearance:

MR HS MUNSHAW for Petitioner-Corporation

MR JS BRAHMBHATT for Respondent-Workman

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2000

COMMON ORAL JUDGEMENT

Special Civil Application No. 10485 of 1999 is filed by the petitioner-Gujarat State Road Transport

Corporation [hereinafter referred to as, `the Corporation'] challenging the order passed by the Industrial Tribunal in Approval Application No. 38 of 1994 dated 9th December, 1998 whereby the approval application is rejected.

Special Civil Application No. 378 of 2000 is filed by the respondent-Kalubhai Gorbhai Labana [hereinafter referred to as, `the respondent-worman'] praying for implementation of the order passed by the Industrial Application rejecting the approval application filed by the petitioner-Corporation.

Rule issued in both these writ petitions. Learned advocates appearing for the Corporation as well as workman concerned waive service of rule on behalf of the respective parties. With the consent of the learned advocates, both these matters are taken up for final hearing today.

The brief facts of the present writ petitions are that the workman concerned was working as a Conductor in Vadodara Division of the Corporation. The allegations against the workman are that when he was on route from Station to Panigat Tank on 20th January, 1994, his bus came to be checked by the Checking Squad of the Corporation at Davakhana Stand and during the course of inspection two passengers were found without tickets, inspite of the fact that from these two passengers fare amount was collected by the workman concerned. It was also found that in traffic cash there was a shortage of Rs. 16=15p. On the basis of said allegations, a chargesheet dated 11th February, 1994 was served upon the workman and after departmental inquiry, the workman concerned was dismissed from service on 17th November, 1994. At the time of dismissal, an industrial dispute being Reference (IT) No. 340 of 1990 was pending, and therefore, the Corporation has filed an Approval Application under Sec. 33 (2)(b) of the Act. The said application was filed before the Industrial Tribunal No. 2 at Vadodara. The Industrial Tribunal has examined the merits of the matter as well as the question of legality and validity of the departmental inquiry and after considering the decision of this Court in the matter of Amir miya Pirmiya Kadri reported in 1992 (2) GLH 21 came to the conclusion that the departmental inquiry is vitiated as the inquiry officer has acted as a prosecutor and judge and thereafter the Tribunal has examined the findings given by the Inquiry Officer and came to the conclusion that the charges levelled against the workman concerned were not found to be proved. Ultimately,

considering the decision of the Apex Court in the matter of Lala Ram v. Management of DCM Chemical Works Limited, AIR (1978) SC 1004, the Tribunal rejected the approval application filed by the Corporation. The effect of rejection of approval application is that the workman is deemed to be in service, that is the dismissal order cannot become effective as it become null and void, and therefore, the workman concerned has filed a petition praying for implementation of the order of rejection of approval application by way of directing the Corporation to reinstate the workman concerned withfull backwages for the interim period.

At the time of hearing both these matters, learned advocates appearing for the respective parties gave consent to this Court to examine the merits of the matter in respect to the misconduct in question, considering the length of service, past record and other relevant factors to exercise powers under Sec. 11 (A) of the Industrial Disputes Act, 1947. Submissions of both the learned advocates is that instead of considering the legality and validity of the order passed by the Industrial Tribunal in approval application and to take the decision of remanding the matter back to the Tribunal instead of that if this Court will exercise the powers similar to Sec. 11 (A) of the I.D Act and to pass appropriate order considering the merits of the matter so that the time can be saved and matter can be examined on merits and put to an end on merits by this Court. Therefore, considering the request made by both the learned advocates and also considering the decision of the Apex Court in the matter of Workmen of Bharat Fritz Werner (P) Limited v. Bharat Fritz Werner (P) Limited reported in 1990 (1) JT SC 305 wherein the Apex Court has held that if both the parties make request, the High Court in such matters instead of remanding back the matter to the lower Court to exercise similar powers like under Sec. 11 (A) of the Industrial Disputes Act then the High Court certainly can exercise such powers on being requested by both the learned advocates. Considering the decision of the Apex Court and the joint request made by both the learned advocates to decide both these petitions on merits, after examining the allegations, considering the length of service, past record of the workman and to pass appropriate orders. Therefore, now I am examining the merits of the matters.

The allegations against the workman concerned are that at the time of checking on 20th January, 1994, two passengers in a City bus were found without tickets though the fare amount of Re. 1.50p. was recovered from

both these passengers. Further, there was a shortage of traffic cash to the tune of Rs. 16.15 p. The past record of the workman concerned has been produced by the petitioner Corporation wherein in past about 23 defaults are committed by the workman concerned wherein in almost all the cases the allegation are to the effect that passengers were without tickets and no fare amount was collected by the respondent workman. In one of the incident, fare amount was collected and no tickets were issued. On 20th January, 1994 when the workman concerned was on duty in a City Bus from Station to Panigat Tank, two passengers were found without tickets and allegation was that the fare amount of Rs. 1.50 p. each was collected from both these passenger, however, tickets were not issued to them. However, in the traffic cash shortage of Rs. 16.15 p. was found. If the workman has recovered the amount of Rs. 1.50 p. and not issued tickets then the net result of such recovery of fare must be excess and not shortage in the traffic cash. In the explanation given by the workman, the respondent workman has deposed that at the time of checking he was doing road booking and it was a city bus and at the very short distance of departure, the bus was checked and he had not recovered the fare amount from the two passengers. However, the competent authority has come to the conclusion that the misconduct alleged against the respondent workman was found tobe proved. Though requested by the respondent workman, these two passengers were not examined during the course of departmental inquiry. In the explanation tendered by the workman, the workman has pointed out that in the city services if on each stand `stand-booking' is done then there are chances of bus getting late which creates dissatisfaction amongst the passengers who are travelling and as a result, as per the rules, the stand-booking is not possible. Further, at the time of checking, he was doing road booking and he has not recovered the fare amount from these two passengers. Considering the explanation given by the work and also considering the effect of rejection of approval application, the workman is entitle to reinstatement with full backwages for the interim period as the inquiry has been held to be invalid and the finding has been declared perverse. Therefore, considering the gravity of misconduct that two passengers were found without tickets in a city bus, in a short distance and at the time of checking, the workman concerned was doing road booking and shortage was found in the traffic cash, and also considering the lengthof service of the workman and 23 defaults committed by him in past, according to my opinion, if the punishment of dismissal imposed by the competent authority dated

17thNovember, 1994, if it is set-aside and if it is directed to the Corporation to reinstate the workman concerned in service with continuity of service without backwages for the interim period ie., from the date of dismissal dated 17-11-1994 till the date of order passed by the Industrial Tribunal dated 9th December, 1998 then it will be a sufficient punishment to the workman for not issuing the tickets in time and for not doing the stand booking, as per the rules of the Corporation. Denial of backwages for the interim period is also a punishment as held by this Court in the matter of G.S.R.T.C v. Danaji Sukhaji Kodia, 1994 (2) LLJ 1113. Therefore, legally in pursuance to the rejection of the approval application, the workman concerned is entitled to full backwages for the interim period and that full backwages is denied to the workman concerned by way of punishment for the misconduct in question which is found to be proved. Therefore, considering the shortage of traffic cash to the tune of Rs. 16.15p and the past record of 23 defaults, the punishment of denial of backwages for the interim period ie., from 17.11.1994 to 9.12.1998 is a sufficient punishment which will meet the ends of justice and both these deserves to be partly allowed.

Accordingly, in light of the observations made hereinabove, these two petitions are partly allowed. The petitioner-Corporation is directed to reinstate the workman concerned in service with continuity of service within a period of four weeks from the date of receipt of copy of this judgment. However, the respondent workman shall not be entitled to backwages for the interim period ie., from 17th November, 1994 till the date of rejection of approval application ie., 9th December, 1998. The Corporation is directed to pay full wages to the workman concerned from 9th December, 1998 till the date of his actual reinstatement in service within a period of eight weeks from the date of receipt of copy of this judgment.

Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

[H.K Rathod, J.]

Prakash*